

Application No. 10/698,391  
Attorney Docket No. DP-977 US (MAR.092)

**REMARKS**

Entry of this response under 37 C.F.R. §1.116 because no new claims or issues are raised and the only claim amendments being existing dependent claim matter into the independent claims.

Claims 1-26 are all the claims currently under examination in the present application. Claims 11-14 and 19-26 have been amended. No new matter has been added.

It is noted that the claims amendments are made only for pointing out the claimed invention more particularly, and not for distinguishing the invention over the prior art, narrowing the claims, or for statutory requirements for patentability. Further Applicant specifically states that no amendment to any claim herein should be construed as a disclaimer of any interest in or right to an equivalent of any element or feature of the amended claim.

Applicant gratefully acknowledges the Examiner's indication that claims 1-10 are allowable. Applicant submits, however, that all pending claims are allowable.

Claims 11-14 and 19-26 stand rejected under 35 U.S.C. §103(a) over Padovani et al. (U.S. Patent Publication 2003/0063583) (hereinafter Padovani) in view of Gringeri et al. (US Patent No. 6,233,226) (hereinafter "Gringeri").

These rejections are respectfully traversed in the following discussion.

**I. THE CLAIMED INVENTION**

An exemplary aspect of the claimed invention, as recited in independent claim 11, and as similarly recited in claims 12-14, is directed to a transmission rate controlling method of mobile radio equipment for controlling a rate of radio data transmission between mobile radio equipment and a base station, the method including decoding encoded data, judging whether

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or not decoding has been performed in time based on whether load data exceeds a preset value, and a transmission controlling step for controlling the rate of transmission to/ from a base station if the judging step determines that the decoding has not been performed in time.

In conventional mobile radio equipment, when establishing communication, the mobile radio equipment informs a radio base station of the maximum transmission rate at which it can receive data from the base station. Subsequently, the radio base station adjusts resources to allocate resources to the mobile radio equipment newly connected thereto. After that, the radio base station determines the transmission rate for the mobile radio equipment, and enters into communication with the radio equipment.

In the radio communication system of the conventional technique, a radio line is operated at a data transfer rate or communication rate which can be selected from predetermined values regardless of whether or not communication has already been established. A radio communication terminal changes the communication rate in response to a request from a radio base station. The radio base station informs a correspondent terminal as to the change of the communication rate.

However, in the above-described conventional techniques, the resources of the radio base station are limited, and maximum efficiency cannot be achieved. Moreover, although the mobile radio equipment requests the maximum rate of data transmission, it might not have a decoding capability commensurate with the maximum transmission rate, even if its radio transmission function is sufficient to receive data normally at the maximum rate.

The present invention, on the other hand, provides mobile radio equipment and a method of controlling transmission rate for the mobile radio equipment based on whether load data exceeds a preset value.

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## II. THE ALLEGED PRIOR ART REFERENCES

On page 3 of the Office Action, the Examiner admits that Padovani fails to teach or suggest deciding if the decoding has been performed in time. The Examiner then alleges that it would have been obvious to combine Gringeri with Padovani to make up for Padovani's deficiency.

To establish a prima facie case of obviousness, several basic criteria must be met. First, rejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness (*In re Kahn*, 441 F.3d 977, 988 (CA Fed. 2006) cited with approval in *KSR Int'l. v. Teleflex, Inc.*, 127 S.Ct. 1727 (2007)). In addition, the prior art reference (or references when combined) must still teach or suggest all the claim limitations. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). See MPEP 706.02(j).

Applicants respectfully submit that neither Gringeri nor Padovani, alone or in combination, teaches or suggests "a judging step for judging whether or not decoding has been performed in time based on whether load data exceeds a preset value," and "controlling the rate of transmission to/ from a base station if the judging step determines that the decoding has not been performed in time," as recited in independent claim 11, and as similarly recited in independent claims 12-14.

Instead, Gringeri teaches calculating a transmission rate for each frame of a video sequence. See Gringeri, Col. 7, Lines 1-13. That is, Gringeri judges the adjustment to a calculated transmission rate according to a calculated model decoder buffer and not "based on whether load data exceeds a preset value," as recited in the claimed invention.

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Accordingly, Gringeri cannot teach or suggest the claimed invention because Gringeri operates completely differently than the claimed invention.

Therefore, Gringeri fails to make up for Padovani's admitted deficiencies.

Accordingly, neither Padovani nor Gringeri, alone or in combination, teaches or suggests "judging whether or not decoding has been performed in time based on whether load data exceeds a preset value," and "controlling the rate of transmission to/ from a base station if the judging step determines that the decoding has not been performed in time," as recited in independent claims, 11-14.

Furthermore, as stated in MPEP 2143.01, If the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims *prima facie* obvious. *In re Ratti*, 270 F.2d 810, 123 USPQ 349 (CCPA 1959) (Claims would require a substantial reconstruction and redesign of the elements shown in [the primary reference] as well as a change in the basic principle under which the [primary reference] construction was designed to operate." 270 F.2d at 813, 123 USPQ at 352.).

Therefore, Gringeri would change the basic principle of operation of Padovani because Padovani operates by deciding on a preselected transmission rate based on link quality whereas Gringeri calculates a transmission rate based on scheduling analysis. That is, the mobile station Padovani adjusts the decoding of the data based on the transmission rate of the data that is set by the base station. That is, there is feedback between the two stations. *See* Padovani, Paragraph [0078]. Gringeri does not have feedback and cannot perform in this manner and therefore, absent impermissible hindsight changes, the combination of Padovani and Gringeri is not appropriate.

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Accordingly, Applicant submits that claims 11-14 are in condition for allowance.

With respect to claims 19-26 which depend from independent claims 11-14, respectively, each of these claims contains all the limitations contained within independent claims 11-14 and are therefore also in condition for allowance.

Therefore, Applicant respectfully requests the Examiner to reconsider and withdraw this rejection.

### III. FORMAL MATTERS AND CONCLUSION

In view of the foregoing, Applicant submits that claims 1-26, all the claims presently under examination in the application, are patentably distinct over the prior art of record and are allowable, and that the application is in condition for allowance. Such action would be appreciated.

Should the Examiner find the application to be other than in condition for allowance, the Examiner is requested to contact the undersigned attorney at the local telephone number listed below to discuss any other changes deemed necessary for allowance in a telephonic or personal interview.

The Commissioner is authorized to charge any deficiency in fees, including extension of time fees, or to credit any overpayment in fees to Attorney's Deposit Account No. 50-0481.

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